

**HIGH COURT OF GUJARAT**

**ASHAKUMARI BABULAL HEIR OF BABULAL BHAVARLAL**

*Versus*

**LIFE INSURANCE CORPORATION OF INDIA**

**Date of Decision:** 02 December 2010

**Citation:** 2010 LawSuit(Guj) 1251

**Hon'ble Judges:** [K S Jhaveri](#)

**Case Type:** First Appeal

**Case No:** 591 of 1991

**Subject:** Insurance

**Final Decision:** Appeal dismissed

**Advocates:** [R C Jani](#), [R K Mishra](#)

**K.S. Jhaveri, J.**

**[1]** By way of this Appeal the Appellant has challenged the judgment and order dated 28.6.1990 of the City Civil Court, Court No. 3, Ahmedabad, passed in Civil Suit No. 2433 of 1986, whereby the City Civil Court has dismissed the Plaintiff's suit.

**[2]** The short facts of this case are that the husband of the present Plaintiff took insurance in the sum of Rs. 20,000/-from the Defendant-Life Insurance Corporation of India under the regular life Policy No. 49491371 and had paid premiums for the said policy regularly. On the death of her husband the present Plaintiff being heir and legal representative of the deceased is entitled to the amount of insurance. In spite of repeated requests made by the Plaintiff, the Defendant did not pay the insurance amount and therefore the Plaintiff issued notice to the Defendant through the advocate as the Defendant corporation did not pay the insurance amount. Thereafter, the Plaintiff has filed the suit before the City Civil Court, Court No. 3, Ahmedabad, being Civil Suit No. 2433 of 1986. The Trial Court after appreciating the evidence and considering the material on record and upon hearing learned advocates for the parties dismissed the suit of the Plaintiff against which this appeal is preferred.

**[3]** Heard learned advocates for respective parties. The Trial Court while deciding the matter discussed the evidence more particularly in paragraph 11 and 12, which reads

as under:

Now on the reference to Exh. 71 which is the xerox copy of the proposal for insurance in question, it can be seen that question No. 18 relates to about the proposed applicant for the insurance suffering from any of the diseases described in item No. A to H. Item No. E reads as under: Paralysis, insanity, epilepsy, fits of any kind or nervous break-down or any other disease of the brain or the nervous system? The answer given to this question is No. The proposal form has been signed by deceased Babulal Bhaverlal Jain. The proposal form is dated 2nd February 1982. Exh. 74 is the xerox copy of the certificate of hospital treatment issued by the V.S. Hospital to the Defendant. According to this certificate deceased Babulal Bhavarlal Jain was admitted in the hospital on 7th March 1983.

Paragraph 4 reads as under:

What, at the time of admission, was (a) The nature of his complaint ?

(b) the duration of the complaint as reported by him? The answer is noted as under:

H/o Headache, high fever, not taking any food since 4 days, H/O convulsions before 3 years. The same answers have been repeated in paragraph 5 also. The material history noted in the records of the V.S. Hospital is with regard to convulsions before 3 years as informed by the patient or the relative of the patient. The policy has been taken in the year 1982, meaning thereby, that the proposal for the policy was made during the period when deceased Babulal Bhavarlal Jain was suffering from convulsions or at least had a history of convulsions prior to the making of proposal for the policy in question. On a reference to the documents noted above, it can be seen that Babulal Bhavarlal Jain had expired on 16th April 1983 in the V.S. Hospital on account of illness. The deceased was 22 years of age at the time of his death. On behalf of the Plaintiff two witnesses have been examined. They are Dr. Shankerlal Masukhlal Shah Exh. 63 and Dr. Madhusudan R. Desai Exh. 64. However, neither Smt. Ashakumari Wd/o deceased Babulal Bhavarlal Jain nor any other relative of deceased Babulal Bhaverlal Jain has been examined to rebut the history of deceased Babulal Bhaverlal Jain, noted in the records of V.S. Hospital.

**[4]** In that view of the matter the deceased was suffering from some disease prior to the date of taking insurance policy. Deceased was admitted in the hospital on 7th March 1983 in connection with the treatment. In the facts and circumstances of the present case, I am of the view that the Tribunal has committed no error, and therefore, appeal deserves to be dismissed. Hence, the same is dismissed.